

September 12, 2018

Dear Chairperson Case and Members of the Board:

Re: STRONG OPPOSITION to Agenda Item D13 - Issuance of Right-of-Entry Permits for Beach Activities to be held on October 16 and 17, 2018; and Issuance of Revocable Permit for Recreational and Maintenance Purposes; Resorttrust Hawaii, LLC, Applicant; Waialae, Honolulu, Oahu, TMK (1) 3-5-023:041.

For five decades I've enjoyed the natural integrity of the public land, shoreline, and waters fronting The Kahala Hotel & Resort. Recently, I've become concerned about the unprecedented gross increase in illegal commercialism on the State-owned ceded land, TMK (1) 3-5-023:041, as operated by Resorttrust Hawaii, LLC (RTH), since 2014. For this reason, I oppose the issuance of Right-of-Entry (ROE) Permits for events to be held on October 16 and 17, 2018; and I oppose Issuance of a Revocable Permit (RP) to Resorttrust Hawaii, LLC because they have demonstrated time and again that they cannot, and will not, comply with the terms of their RP, nor work in genuine good faith with the community, nor respect the natural environment of the area.

DLNR revocable permit number S-7489 (the RP) related to the state land, and issued to RTH on June 8, 2016 allows RTH to:

1. **Occupy and use the Premises for the following specified purposes only: recreational and maintenance purposes.**

Commercialism, is defined as "practices and attitudes that are concerned with the making of profit at the expense of quality." The RP does not allow for commercialism, and as such the commercial activity engaged in by RTH for profit, at the expense of quality of experience for the public, on this State owned land, is not permitted in the RP.

RTH engages in and facilitates the following commercial activities on public land:

- a restaurant and bar (the Seaside Grill)
- alcohol sales and service
- weddings
- commercial events disguised as Right-of-Entry (ROE)
- unauthorized structures, furniture, and other items for rent
- canoe and surf school business

RESTAURANT and BAR

The Seaside Grill, located in the middle of the State parcel, is a restaurant. This was confirmed most recently by the Kahala Hotel general manager Gerald Glennon, during an interview with Catherine Cruz on Hawaii Public Radio, when Mr. Glennon specifically referred to the Seaside Grill as a "restaurant". While the Seaside Grill's kitchen is on private land, the majority of the portion of the restaurant in which customers sit, are served, and consume food and drink (including alcoholic drinks) is on State land. The hotel's own website advertises the Seaside

Grill, complete with a four-page menu featuring cocktails and food for sale. The website says the Seaside Grill, which is located on public land, “is also available in the evenings for **private** functions and special celebrations such as anniversary dinners”. I’ve personally witnessed these private events and special celebrations on numerous occasions when at the beach in the evening with my family.

From Seaside Grill section of the The Kahala Hotel & Resort website:



The restaurant has been roped off and planted around its perimeter in such a manner as to facilitate privacy for commercial use of hotel guests, while excluding the public. This flagrant and egregious commercial activity engaged in by RTH to maximize profits while negatively impacting the quality of the public’s experience of the RP parcel, is in clear violation of the RP’s terms. In 2017, along with expanding its kitchen, RTH increased the footprint of the Seaside Grill. They roped off the area and erected signs stating that the area was exclusively for hotel guests only. Earlier this month - after being caught - RTH removed the signage, rope and all of the seats on the public land. These temporary changes were made only shortly before the BLNR hearing and occurred only after their increased commercialism was publicized.



ALCOHOL SALES AND SERVICE

RTH has been selling and serving alcohol on the RP parcel, daily, without a liquor license. With \$9 beers and \$28 tropical cocktails advertised on the Seaside Grill menu and being served all day long, this is significant commercial activity on the RP parcel.

The DLNR Staff Submittal dated August 24, 2018, notes that the liquor commission visited the site and found no violations. This is of no surprise as RTH was notified of this concern when Cc'd on our June 23, 2018 Sierra Club letter to BLNR Chair Suzanne Case, BEFORE the Liquor Commission visited the RP parcel, thereby giving RTH time to temporarily modify their behavior in anticipation of a visit from the Liquor Commission.

Furthermore, contrary to what is stated in the DLNR Staff Submittal, the investigation remains open and it is premature to imply that there are no violations. This is especially relevant since the Hotel has intentionally made the RP parcel look like it is Hotel property, and because the Hotel has incorrectly placed two "No alcoholic beverages permitted beyond this point" sign on the edge of the beach, rather than correctly placed on the boundary between the Hotel property and the RP parcel which is further Mauka. This makes it difficult for anyone, including even a Liquor Commission investigator, to accurately conclude that the alcohol being sold and served on what appears to be Hotel property is actually being sold and served on the RP parcel.





Yellow circles in the May 26, 2018 photo below shows restaurant wait help attending to hotel guests, as well as a menu, wine bottles, wine glasses with wine, and beer glass with beer on hotel guests tables in the Seaside Grill, on the State Land.



The May 26, 2018 photo below shows RTH wait help (at right in the photo) with uniform and black apron, walking out to serve hotel guests on the RP parcel. This is commercial activity and is not allowed per the RP.



In addition to selling and serving alcohol on the RP parcel without a liquor license, and conducting commercial activity when it is not allowed per the RP terms, every day there are beer bottles and commercial alcohol sales-related trash left overnight on the parcel. This is also a violation of the RP section A-10 that states that the permittee is responsible for “Keep(ing) the premises.... in a clean, sanitary, and orderly condition”. This would not be an issue if this kind of commercial activity were not engaged in by RTH on the RP parcel. See photos below taken at approximately 7 a.m. on June 15, 2018.





WEDDINGS

RTH regularly conducts weddings, for a fee between approximately \$3600 and \$7100 per hour, on the RP parcel. Weddings are neither “recreational” nor “maintenance”. Furthermore, as conducted for a fee, these weddings and their associated wedding related activity constitute significant commercial activity and is not allowed per the terms of RP.

Importantly, when the issue of weddings came up again in July of 2016, BLNR Chair Suzanne Case wrote a letter to RTH attorney at the time, Tim Lui-Kwan informing him that weddings are not allowed under the RP, which was for recreational and maintenance purposes only. Chair Case wrote “No other commercial activities shall be conducted thereon without authorization from the Land Board” then went on to instruct the hotel to immediately cease conducting any wedding ceremonies planned for the premises and until Land Board authorization is obtained. Since then, RTH has had numerous weddings on the RP parcel in clear violation of the RP and without Land Board authorization.

In an interview on August 20, 2018 with Catherine Cruz of Hawaii Public Radio, GM Gerald Glennon said because they were informed not to have any weddings on the RP parcel without BLNR permission, they have stopped taking reservations for weddings on the RP parcel back in 2017. This statement was echoed in the DLNR Staff Submittal, Page 7, Right-of-Entry section where DLNR staff notes that “RTH advised the staff that they had stopped taking reservations for events planned on State lands, immediately after they were advised by the State about the prohibition of such events without prior approval.” While RTH may have stopped taking *reservations* for weddings and other events, they have continued to hold weddings on the RP parcel, despite BLNR Chair Case’s explicit instructions.

The two photos below show the TWO different weddings being set up, simultaneously on the same date, May 26, 2018. The first photo is on the Eastern end of the RP parcel while the second photo is on the Western end of the RP parcel. Weddings on the RP parcel are very common. These two just happened to be on a day when I had my camera with me.





RTH weddings, corporate events and other events always span most, if not all, of the width of the RP parcel, particularly on the Western end of the parcel as shown above on May 26, 2018. It becomes difficult if not impossible to get around or pass the wedding in order to access the rest of the public land and beach. This is particularly true at high tide when the cement ramp to the beach is inaccessible. RTH has on occasion provided staff to escort the public in a circuitous manner, through the service corridor, between the carpark structure and the Magnum Bar, around the wedding, to get to the other side of a wedding. This is ridiculous for the public to have to go through in order to simply access and enjoy public land, public shoreline, public beach, and public water. Having no access, and /or being escorted around a wedding, makes it impossible for the public to have an enjoyable experience of free and clear access to the RP parcel and beach.

Page 7 of the DLNR Staff Submittal also reads:

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

To be clear, RTH as the applicant, has not had their permit terminated because there has not been adequate enforcement. They have been non-compliant in numerous serious ways, and yet it would be erroneous to conclude that non-enforcement by State and City agencies equates with compliance by RTH.

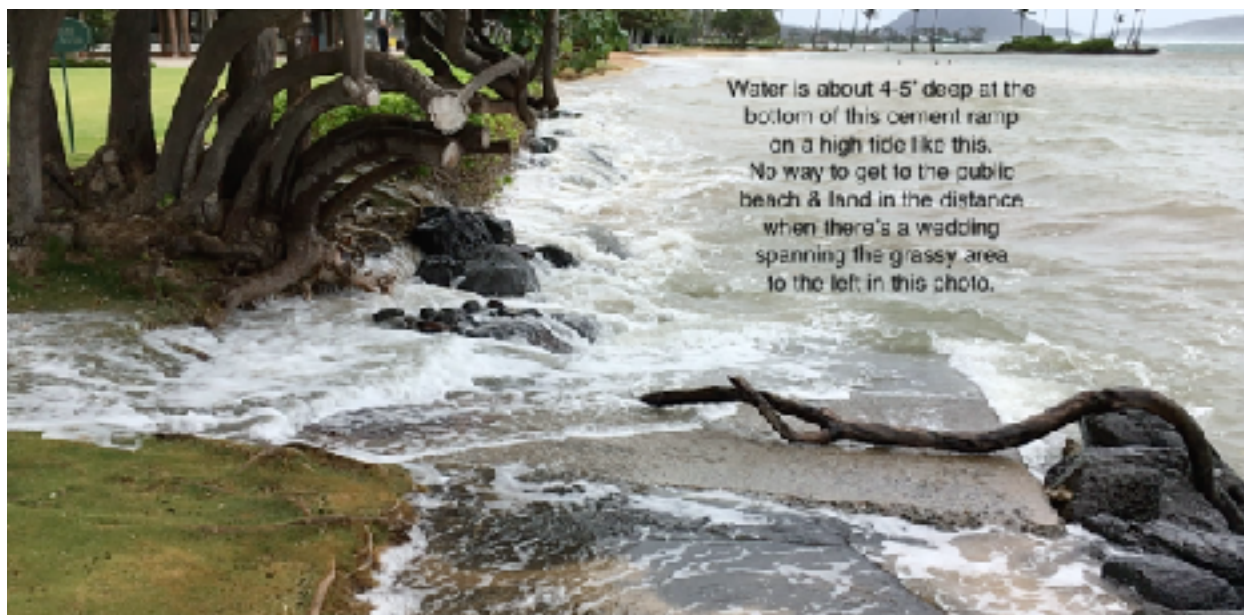
COMMERCIAL EVENTS DISGUISED AS ROE

Regarding the RTH's request for "Right of Entry" (ROE) permits for two commercial for-profit corporate events on our public land, I ask that you please reject these simply because they are nothing more than after the fact "permission" to continue to conduct commercial activities in violation of the terms and intent of the RP. Granting permission would appear to be a direct violation of the intended recreational and maintenance use of the RP parcel. Granting permission for these would also lead to further increases in commercial activity... the hotel will

ask for more and more until, eventually, it will be asking for ROE for the entire parcel on a regular / frequent basis.

Granting these ROE's would also be inconsistent with the BLNR mandate of preserving and protecting public resources. If BLNR were to base granting of ROE permission on inaccurate and partial information from the very party that an ROE would benefit (The Hotel) this would mean a poor business decision for the State and a highly lucrative concession for Hotel, all at the expense of the public and our natural resources.

The DLNR Staff Submittal includes a recommendation for RTH to be granted permission to conduct two corporate events in October 2018. Given the numerous conscious violations and flagrant defiance of explicit instructions by BLNR Chair Case, issuing permission for RTH to hold these two corporate events on the RP parcel would be akin to allowing a person with multiple DUIs to continue to drive.



UNAUTHORIZED STRUCTURES, FURNITURE, & OTHER ITEMS FOR RENT

Despite the following very clear language in the RP:

17. Permittee shall not, without the prior written approval of the Chairperson of the Board place improvements within the Premises, and/or preset beach equipment or conduct surf instruction within the public beach fronting the Premises.

RTH has placed numerous unauthorized structures, furniture, and other items on the RP parcel, including approximately 10 large, heavy cabanas on heavy rock slabs sunk into the ground, each housing a heavy constructed two lounge chairs, as well as 13 heavy timber clamshell

double-lounges (the same numbers they are asking for permission to have on the RP, after the fact that they have already put them there and violated the terms of the RP), all of which have a sign placed on them saying they are for hotel guests, and all of which can be rented for a commercial fee. The 10 cabanas rent for \$165 per day and are rented out ever day. The gross commercial revenues from the cabanas along, on the RP parcel, generate \$49,500 per month.

The Hotel also rents beach chairs. As stated in the RTH application, the Hotel is asking to pre-set 13 clamshell lounges (26 seats) rented at \$65 per day. This potential gross revenue is \$25,350 per month. Therefore, "recreational use" of only two of the three kinds of seating in the RP area generates \$898,200 worth of annual commercial income for RTH.

This figure does not include additional income from liquor sales, food service, or other charges. Compare the gross income from just the cabanas and clamshell lounges at \$74,850 per month, with the monthly RP fee of less than \$1,300. The RP parcel is being heavily commercialized by the hotel, while ripping off the State, and negatively affecting the quality of the public's experience of the area's natural resources.

RTH has also an open air Hale, and various cabinet like structures, and a canoe on the RP parcel without approval of the Land Board. As mentioned and shown in photos earlier in this testimony, RTH also has a roped off restaurant for hotel guests, The Seaside Grill, complete with tables, chairs, and a shade cloth roof, on the RP parcel, all without prior written approval of the Land Board. These are all violations of the RP, as well as in violation of several State and City laws / rules.

These structures placed on the RP parcel congest the parcel and ruin the quality of open space integral to an enjoyable experience of our natural resources in this area. The structures are all part of the commercial activity that RTH conducts on the RP parcel without permission, and at the expense of the quality of experience for the public.

The May 26, 2018 photo below shows cabanas and lounge chairs for hotel guests placed side-by-side all the way across the Eastern half of the state parcel at the boundary where the RP parcel meets the beach. There is no room for the public to spread a picnic blanket or towel where the grass meets the beach, to sit on to enjoy a view of the ocean. All the land visible in this photo is on the RP parcel...none of it is Hotel property.



The Hotel has a financial interest in maximizing the area for its paying guests and excluding non-paying members of the public. The congestion and commercialism on the RP parcel because of RTH's cabanas, blue clamshell lounges, and traditional chaise lounges restricts access for the public and negatively affects the quality of the public's experience of the area's natural resources.



In a letter dated August 6, 2018 from Carlsmith Ball, LLP, the Hotel's attorneys have requested to store an outrigger canoe, and / or other ocean-related recreational equipment, on the Eastern end of the RP parcel. This is the same location on which RTH has for several years, totally without permission and in violation of their RP, already been using the area for storage and facilitating the storage of the Hans Hedemann Surf School canoe.

The June 15, 2018 photo below shows the canoe, a bench, a heavy timber double lounge (in the background), and approximately 24 traditional lounges, all stored on the Eastern end of the RP parcel, without prior Land Board permission. Crowded, and leaves little room for the public.



Page 6 of the DLNR Staff Submittal dated September 14, 2018 shows a table with a total count of requested "items" to place on the parcel as 40. This total count is incorrect, and much lower than the actual item count. This table, by counting some of the items as individual items, and while grouping other individual items, with no apparent explanation as to why they are grouped, is incorrect and highly misleading in the manner in which the information is presented. DLNR Land Agent Barry Cheung has acknowledged in a September 6, 2018 email to me that this count is inaccurate, but said he was not able to change or amend the Staff Submittal and that the the corrections can be brought up at the BLNR hearing. There is no reasonable justification for the peculiar presentation of the information in this manner, other than to mislead the BLNR into thinking there are fewer items that RTH is requesting permission for, than there really are.

To be clear, "Beach Chair Storage" is not an item, nor is "SSG Seating Area", nor are several other "items" listed, actually items. A close look at the list shows that some items are grouped into bunches and listed as one item, which understates the count of 40, which is misleading. Cabanas and Clamshell lounges count as two items each as they each have two lounges in them. Chairs are listed as 3 and 2, making up 5 of the total 40 count. But close inspection shows the 3 chairs are actually 3 sets of 4 chairs and the 2 chairs are actually 2 sets of 6 chairs, making the item count jump from 5 to 24. The list also includes Beach Chair storage but does not even list or mention the 75 to 100 traditional vinyl strapped lounges that the hotel has all over the RP parcel and plans to store in the "1" "Beach Chair Storage" area contributing to the total count. The "SSG Seating Area" is also listed at "1" unit yet they have had, conservatively,

up to 20 tables, each with 4 chairs, placed on the RP parcel. The table also lists “Outrigger Canoes Storage” (plural), indicating more than one canoe, and yet, the item count is still listed as only 1. The more canoes that are stored, the more space is taken away from the public. Listing “Canoes” as 1 item is misleading.

The corrected Staff Submittal table below shows a total item count more than six times higher than what is listed, jumping from 40 items up to a more accurate, even conservative, total item count of 257. This doesn’t even include a corrected item count of the KOKK storage area, nor does it include the 20 or so cocktail tables or Poolsafe boxes RTH has recently placed next to the lounges on the RP parcel.

Item	Reference on the map	Dimensions (ft)		Area	Count	Total Area (sq ft)
KOKK Storage Area	1	14	40	560	1	560
Cabana Hale	2	8	9	72	1	72
Cabana Tent	3-6, 10-15	10	10	100	20 10	1000
Beach Shower	7	8	8	64	1	64
Tower Caddy	8	2	6	12	1	12
SSG Seating Area	9	71	27	1917	100 1	1917
Hammock	16	13	4.5	58.5	1	58.5
Trash Can	17, 38-40	2	4	8	4	32
Beach Chair Storage	18	18	26	468	75 1	468
Clam Shell Lounges	19-31	5	6	30	26 13	390
Beach Chairs Setup 4 Chairs	32,34,36	12	7	84	12 3	252
Beach Chairs Setup 6 Chairs	33,35	8	7	56	12 2	112
Outrigger Canoes Storage	37	9	24	216	3 1	216
					257 40	5153.5

This 257 item count is the same amount they have had and currently have, on the RP parcel, in violation of their RP, and that they are now asking for after-the-fact permission to place on the RP.

Furthermore the total square footage used by the items, of 5153.5 listed on the table is also misleading as it does not account for any circulation space around the items. Most of these will items will be occupied requiring personal space, thereby doubling the square footage of public land these items use. RTH has a vested commercial interest in monopolizing the open space of the RP parcel, to maximize its revenues. This negatively affects the public’s use and enjoyment of the public land.

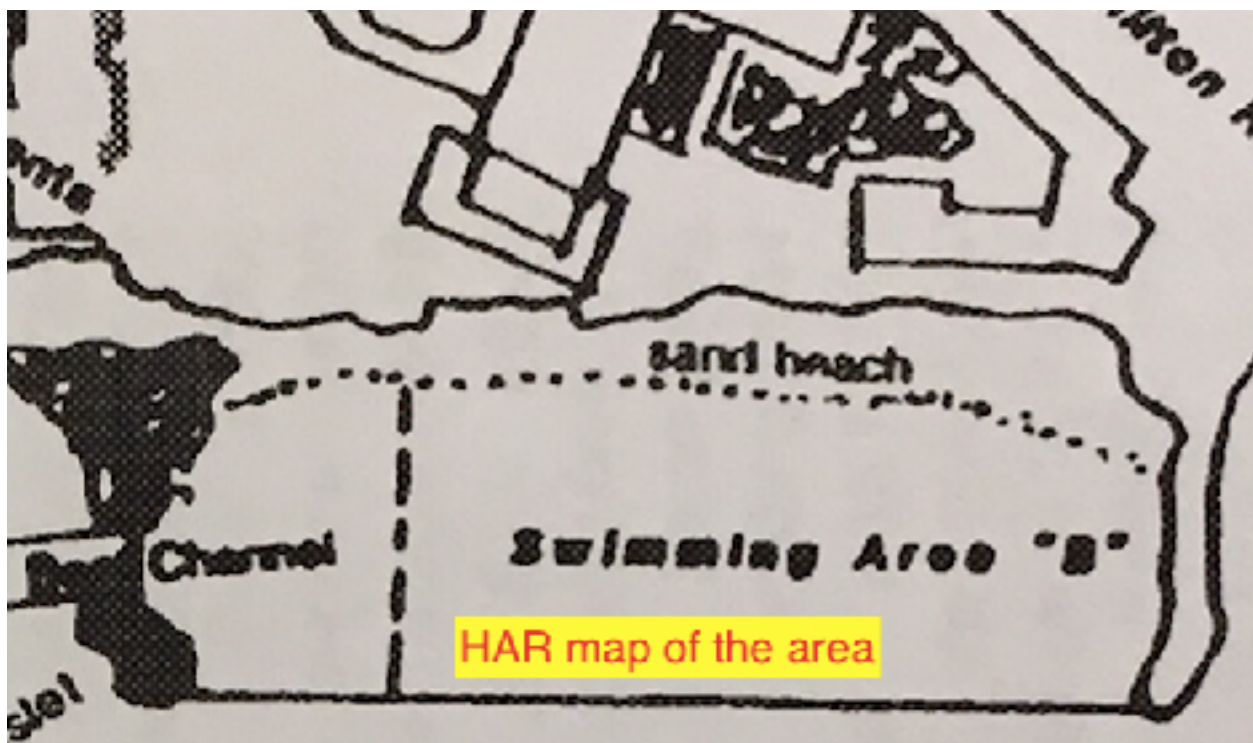
CANOE AND SURF SCHOOL BUSINESS

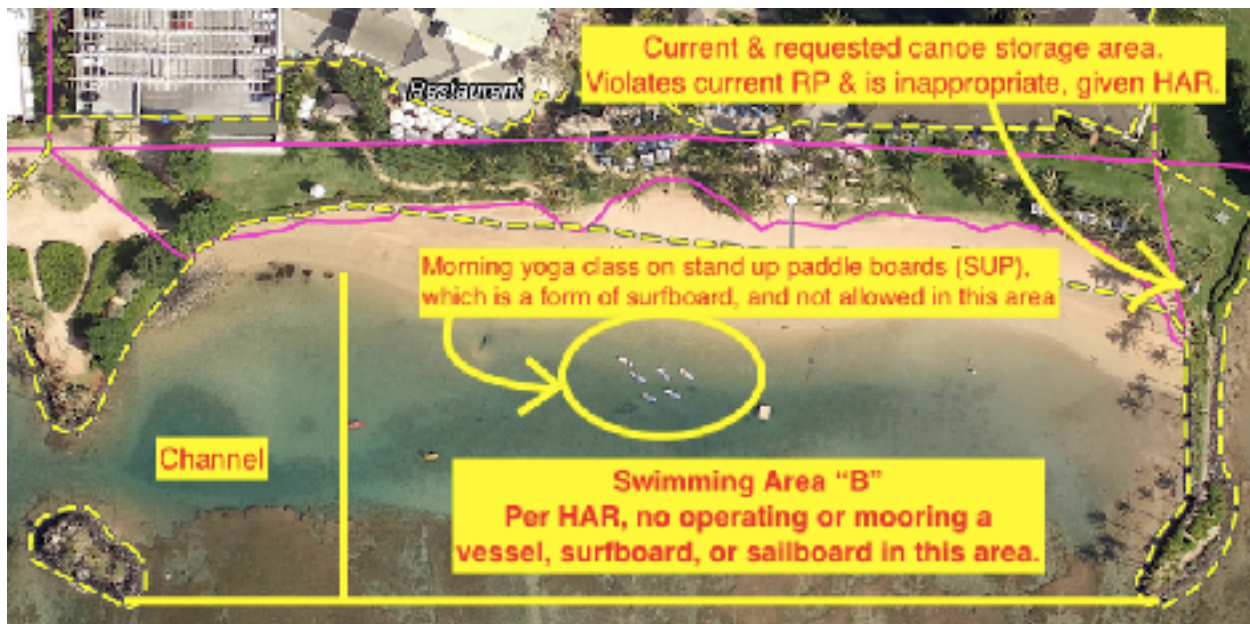
In addition to being in direct violation of the terms of the RP, storage of the canoe where it has been stored on the RP parcel which is the same area as requested, is problematic in that it leads to use of the canoe in the area of the lagoon that is designated in the Hawaii Administrative Rules (HAR) §13-256-89, as a swimming- and bathing-only area.

- (2) **Restrictions.** The Waialae-Kahala swimming areas A and B are designated for swimming and bathing and the use of water sports equipment. No person shall operate or moor a vessel, except as provided for in subsection (d), or surfboard, or sailboard within this area.

It is implausible to conclude that the canoe, if stored at the Eastern end of the RP parcel where it has been illegally stored for several years, and where the proposed / requested storage is (see photo of canoe above), would be moved down the beach to the far Western quarter each time it is used, where it could be launched into the HAR designated boat channel, and then carried or rolled all the way back on the sand to the Eastern end of the RP parcel. Surely, if canoe storage is granted at the Eastern end of the RP parcel, the canoe will be launched into the swimming-only area of the lagoon, thereby violating HAR §13-256-89. For these reasons it is not a good idea to permit any canoe, kayak, SUP, or other vessel to be stored on the Eastern three quarters of the RP parcel.

Please see diagram below from HAR.





HAR §13-256-89 was developed before Stand UP Paddle-boards (SUP) widely used or known by many. Since a SUP is the same as a large surfboard, it's reasonable to conclude that the HAR §13-256-89 (2) rule, shown above, also applies to, and includes, SUPs. Please also see the photo immediately above. The yellow circle in the center of the photo, shows morning yoga classes being conducted on SUPs in the swimming-only area of the lagoon, in violation of HAR §13-256-89.

Since 2014, RTH has been promoting activities in the swimming-only lagoon, through the Hotel's website and on the RP parcel, in violation of HAR §13-256-89. RTH advertises and facilitates activities such as surf lessons, SUP yoga, SUP rentals, kayak rentals, and canoe rides, all of which happen in the "Swimming Area B" where these vessels are not allowed, per HAR §13-256-89.

Since shortly after RTH took over the Hotel in 2014, The Hans Hedemann Surf School has been conducting surf lessons on the beach, as facilitated by RTH, and in direct violation of the terms of the RP. This unprecedented increase in commercial activity only recently stopped on the beach, only after specifically instructed to do so via an email dated July 12, 2018 from DLNR DOBOR's Oahu District Manager Meghan Statts. The surf school now conducts surf lessons just off the beach in ankle deep water, which may be technically in compliance, but violates the spirit of the terms of the RP and demonstrates poor respect for the community and the natural resources of the area. The surf school activities further commercialize the area and negatively affect the quality of the public's experience of the natural resources. If BLNR were to grant permission to store the canoe or any other ocean related equipment at the Eastern / Koko Head end of the RP parcel, it would "reward" the hotel and surf school for violating the HAR §13-256-89 and the RP, and it would send a message that these important State rules and laws don't apply to RTH or it's invited contractors.

See screen shots below from the Hotel's website, promoting and facilitating violation HAR §13-256-89, via advertising independent contractors non-allowed commercial activities in the swimming-only lagoon. RTH and its contractors use the RP parcel for storage, set up, and instruction of these commercial activities, in violation of the RP.

Stand Up Paddling (SUP)



Stand up paddling is a new sport to hit the islands and has grown in popularity in the last several years. It is a great core work out and requires minimal skill. Allow your guide to teach you the basic skills to master this balancing act. *Stand-Up Surfboard Rental available at \$30 per hour, \$1K*

A Kahala Res
8

Free introduction SUP class daily from 9:30am - 9:45am for Kahala guests

Surf Lessons

Standing up on a surfboard has never been so easy! There will be a brief instructional demonstration and practice on the beach prior to heading out to the surf zone. At The Kahala Hotel & Resort, we utilize the outrigger canoe to access the surf. We provide each participant with reef walkers, a rash guard, a leash, and a surfboard. Our surf instructor will imbue you with the confidence, motivation, and knowledge needed to stand up on your first surfing experience. *\$100 per person for 90 minutes*

Free introduction Surf class with Beach Adventures from Hans Hedemann Surf School daily from 9:15 am - 9:30 am for Kahala guests.



CHI Health & Energy Fitness Center

Exercise Classes

Fit For You Our fitness center features all the modern amenities you would expect from a luxury...

[read more](#)

Kayaks



One or two person touring kayaks are available and allow you to paddle around our bay. Enjoy the breathtaking views as you paddle out to the open ocean from the bay! \$25 per hour - one person kayak, \$30 per hour - two person kayak

ILLOGICAL COMMERCIAL RATIONALIZATION

In the August 6, 2018 letter from Carlsmith Ball, LLP, the attorneys for RTH ask “*What would be the purpose of the Hotel paying for a Revocable Permit, insuring the State Parcel, and maintaining the State Parcel at no cost to the State, if that Revocable Permit did not authorize any greater rights to the Hotel than otherwise permitted to the public at large?*” The attorneys go on to list RTH expenditures on beach grooming and tree trimming within the RP parcel. It is notable that no mention is made of the income RTH receives by its commercial activities on the RP parcel.

Furthermore, contrary to what RTH’s attorneys suggest, the majority of expenses that the RTH spends to maintain the RP parcel are not saving the State these costs. The State wouldn’t be spending on most of these things for this parcel anyway even if the Hotel didn’t have the RP. The State doesn’t groom the rest of Kahala beach. Other than removing coconuts, and some frond trimming, the State doesn’t trim trees or bushes on a regular basis or barely at all, along Kahala beach.

It would be an error to be lured into thinking that RTH needs to have greater rights to the RP parcel than the public just because they pay a monthly permit fee. RTH, as a for-profit private business, is about commercialism and maximizing profits. They are a business and this is what they do. But to pitch their commercialism as something they are doing for the State, or that they have a right to do it because they pay a permit fee for “recreational and maintenance” purposes, is a gross perversion of the facts.

To be clear, RTH has a large interest in making sure the RP parcel is maintained and looking nice for its hotel guests. *THIS* is the main purpose that RTH pays for the RP. If RTH doesn’t have a RP for the parcel, they cannot maintain the property to look manicured and as if it’s an extension of the Hotel like they want it to appear. Their guests will think the hotel is not well taken care of and this will hurt sales on the Hotel’s private property. It’s a beach-front hotel in guest’s minds because RTH is fortunate to have a RP allowing recreational access to the beach and ocean for their guests. The ocean view, the ability for hotel guests to casually walk around

on the parcel, and access across this parcel to the beach and ocean, are the highlights of a stay at the Hotel. This is what guests pay for. So it's in RTH's best interest to maintain the property. In the same way that I can't just go to the shoreline and start pruning and mowing without BLNR permission, neither can RTH. They need permission to this, and that is why the RP is for recreational and maintenance purposes.

In the same August 6, 2018 letter, the attorneys at Carlsmith Ball attempt to make the term "recreation" as stated in the RP, more inclusive of RTH's commercial activities by oddly paralleling the term with "Amusement and recreation facility". These are wholly different concepts and not comparable.

UNPRECEDENTED INCREASE IN USE OF RP PARCEL

In the "Corrective Actions By Resorttrust Hawaii / The Kahala Hotel " section of the same Carlsmith Ball letter, the attorneys go on to say that RTH has taken significant steps that "substantially reduce the Hotel's use of the State Parcel". Contrary to this statement, only a single bullet point on their list of 10 points is about reducing use on the RP parcel (the removal of a trellis used for wedding backdrops) and even that is far from a "substantial" reduction. Without visiting the site in person, a simple read of the words and sentences on their list show that everything else on their list has nothing to do with using the RP parcel less.

For example, how is the following point from their own list a "substantial reduction", or even any reduction, of their use of the RP parcel?

- Earlier this year, the Hotel underwent a multi-million-dollar renovation of Hoku's and The Veranda. That renovation work included a full renovation of the lawn within the State Parcel, including the removal of potential tripping hazards from the hau tree roots.

RTH attorneys state that RTH has moved weddings back onto their private property. In fact, they have merely put their wedding gazebos on wheels, only to roll them out onto the RP parcel for weddings then back off the RP parcel for storage.

In fact, RTH has *increased* their use of the RP parcel by moving their pre-set furniture from the beach to the grassy RP parcel and placing new "Pool-safe" boxes next to their lounges (large cooler like items with black fabric covers) for hotel guests to secure their valuables and hold their drinks on the top when they are using the RP parcel.

Photos below show Poolsafe boxes that have been recently added to the RP parcel.



RTH has further increased their use of the public parcel by moving all of their blue clamshell lounges and traditional vinyl strapped lounges, which were illegally preset on the beach and in violation of their RP, up onto the grassy RP parcel. This increases the use of the RP parcel. To conclude otherwise is simply false.

Please compare the RP parcel in the (following two photos, below and next page). The first photo, immediately below, shows what the area used to look like. Please note how the grassy area of the RP parcel is free of cabanas, clamshell lounges, traditional lounges, and other commercial structures, other than the illegal commercial Seaside Grill area in the center of the photo.



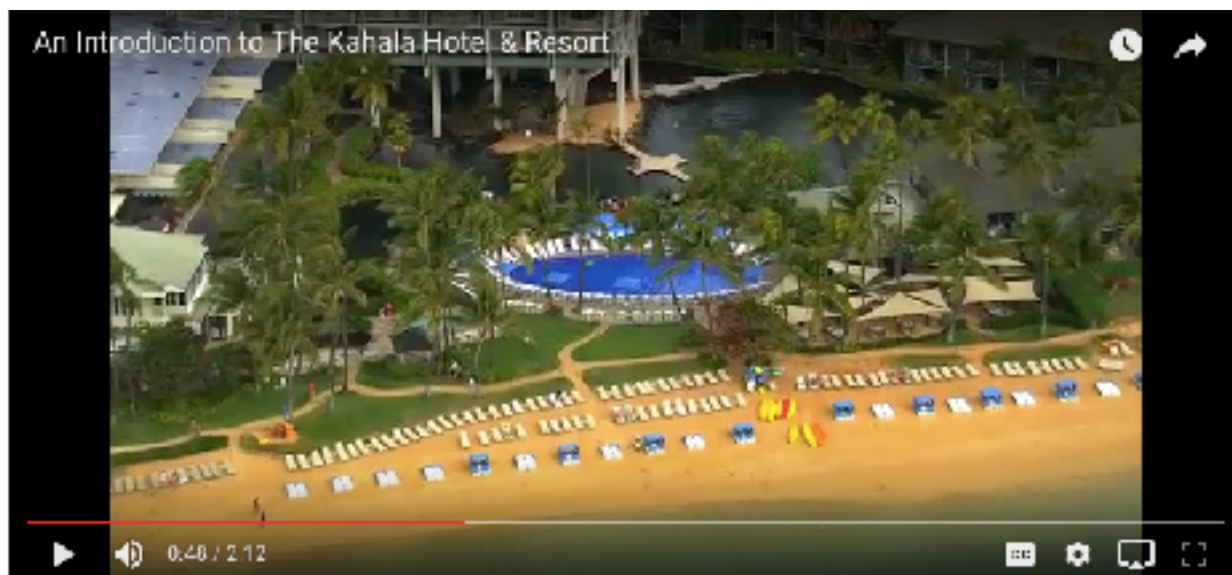
The second photo (below), taken on the morning of June 15, 2018, shows just a portion of the congestion caused by RTH's seating and structures on the Eastern end of the RP parcel. The cabanas rent for a commercial fee of \$165 / day, and wait help serves food and alcohol via commercial business, to hotel guests on any of this seating, all day long, day after day. This congestion degrades the quality of the public's experience of the natural resources in the area.



CROWDING OUT THE PUBLIC

Please note the following in the screen shot below from a Youtube video:

- Pre-set beach chairs in violation of the RP
- Kayaks for rent to be used in the swimming-only section of the lagoon
- Seaside Grill restaurant seating area on public parcel
- Lack of cabanas and lounges on the RP parcel



For decades, the Hotel's outdoor lounge seating was primarily on hotel property. Makai of that was the open, uncluttered and non-commercialized grassy RP parcel, and makai of that was the beach. Over the years, the Plumeria cafe dining area has expanded outdoor seating up to the Hotel property line, the Seaside Grill area was developed up to and over the Hotel property line, and the area between the two restaurants was landscaped and re-shaped. All of this added up to there being less space for the outdoor lounge seating on hotel property, so it was then placed on the beach, as in the photo above. When the hotel was caught violating its RP by presetting beach chairs on the beach, it moved those chairs off the beach and onto the RP parcel. So today, we have a clear access non-commercialized beach, which is good, but the RP parcel is now crowded with RTH seating and structures, and RTH commercialism, all of which degrade the public's experience of these natural resources.

The August 6, 2018 Carlsmith Ball letter, goes to great lengths to point out that previous owners over the decades have done various sorts of commercial activity on the RP parcel, as if this is valid justification for RTH to continue to promote, facilitate, and engage in commercial activity on the RP parcel. Clearly, just because a previous party acted illegally and inappropriately, doesn't give license to subsequent parties to act illegally and inappropriately. Furthermore, the commercial activity by previous owners, while violating the RP, was not as flagrant or egregious as the current level of gross commercialization by RTH.

Official minutes from the May 17, 2018 Waialae-Kahala Neighborhood Board No. 3 meeting, reflect that Kahala Hotel General Manager Gerald Glennon said that related to the RP parcel, the Hotel has no intentions to increase commercial activity. This was repeated in the August 6, 2018 Carlsmith Ball letter, by RTH attorneys when they wrote "The Hotel does not want to

change the long-standing practices at the Hotel (over various ownership) and is not seeking to increase the level of Hotel-related activities outside of the Hotel property, and that has been RTH's commitment to the Waialae-Kahala Neighborhood Board." This is in spite of the fact that since RTH has become the owner / operator, they have greatly increased commercial activity on the RP parcel with weddings, other events, cabana rentals, and food and alcohol sales and service.

RTH has also invited, promoted, and facilitated the commercial business of independent contractors in the form of a surf school, and a sailing canoe company, both of which are advertised and promoted on the Hotel website and by Hotel staff, and both of which are directly increasing commercial activity outside of the Hotel property. The Hotel has made no effort to honor its word in this regard, and in fact has continued to facilitate this commercial activity on the RP parcel, the beach, and waters fronting the hotel, by these two contractors.

In a December 20, 2017 email, DLNR DOBOR Oahu District Manager Meghan Statts confirmed that RTH's attorneys are assisting the owner of the sailing canoe company in obtaining legal permission to moor in the lagoon fronting the hotel. The Hotel's website has been and continues to advertise and promote sailing canoe tours of the area, beginning on the beach in front of hotel. The sailing canoe has been illegally moored in the lagoon, for over a year, with no permission from the Army Corp of Engineers, nor from DLNR DOBOR. Contrary to what the Hotel's GM Gerald Glennon has officially stated, advertising and promoting the sailing canoe on the hotel website, inviting independent contractors to do business for hotel guests, and having RTH attorneys assist with the process to obtain a legal mooring in the lagoon, are clear examples of increased commercial activity outside of the hotel property.

Not only do these activities contribute to the commercialization of the public's natural resources in the area, they are telling of RTH's lack of genuine integrity toward honoring its agreements and respecting both BLNR and the community in which the Hotel operates.

CONCLUSION

History shows that over and over, RTH has not acted in good faith, and has egregiously, flagrantly, and continuously manipulated and violated the terms of the RP. Despite what they say, RTH is neither able nor interested in operating within the bounds of a RP. Their history shows that even after their violations are brought to their attention and they are asked to correct their behavior, they continue to push their commercial agenda beyond what is allowed.

Furthermore, State and City investigation into numerous violations engaged in by RTH, are still ongoing, and it has been suggested by at least one department that there appears to be some violation at this time. That department is still investigating and will likely come to a conclusion sometime soon after this BLNR hearing. Therefore, the BLNR currently lacks sufficient evidence to support a fair and integral authorization of a new RP for the parcel, for RTH.

The public wants our natural resources and public access protected from RTH's illegal multimillion dollar commercial enterprise on public land. The public does not want BLNR to validate or authorize the commercialization of the area that RTH is already committing, by issuing a new RP.

I respectfully ask that you please protect the integrity of the natural resources and public access of this area from RTH's commercial interests by denying the renewal of the old RP, denying the

issuance of a new RP, and denying the issuance of rights of entry (ROE) for the two precedent-setting corporate events that RTH's attorneys are requesting.

If and when RTH can show that it has genuinely and completely removed its commercial activity and structures from the public land and water, then perhaps a new RP can be considered.

Thank you for your consideration of my testimony.

Sincerely,

Tyler Ralston

Cc: Senator Stanley Chang
Representative Calvin Say
Senator Laura Thielen
Mayor Kirk Caldwell
Council member Trevor Ozawa
Meghan Statts, DLNR DOBOR, Oahu District Manager
Peter Nakagawa, C&C Honolulu, Liquor Commission, Chief Investigator
Katia Balassiano, C&C Honolulu, Chief Planner, LUPD